

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

MARSHALL KILBURN,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:20-cv-211
)	
AUTOSPORT ACQUISITIONS, LLC,)	
)	
and)	JURY TRIAL DEMANDED
)	
TIMOTHY SUHANICH,)	
)	
Defendants.)	
)	

DEFENDANT'S NOTICE OF REMOVAL

COMES NOW Defendant, AUTOSPORT ACQUISITIONS, LLC, by and through its undersigned counsel, and hereby files this Notice of Removal of the above-captioned action, originally filed in the Circuit Court of Perry County, State of Missouri, to the United States District Court for the Eastern District of Missouri, Southeastern Division, pursuant to 28 U.S.C. §1441, and in support thereof respectfully states as follows:

1. Plaintiff filed his original petition in the Circuit Court for Perry County, State of Missouri on September 4, 2020. Plaintiff is making a claim for negligence and a claim for punitive damages, arising out of a motor vehicle collision which occurred on November 25, 2019. A complete copy of the State Court file, Cause Number 20PR-CC00029, is attached hereto as Exhibit A.

2. Plaintiff is a resident and citizen of the State of Missouri.

3. Defendant is an LLC and its only member is a citizen of the State of Wisconsin.

Therefore, for purposes of removal based on diversity of citizenship, Defendant is not a citizen of

the State of Missouri. *See GMAC Commercial Credit LLC v. Dillard Dept. Stores, Inc.*, 357 F.3d 827, 829 (8th Cir. 2004) (holding that an LLC's citizenship is that of its members for diversity jurisdiction purposes).

4. With regard to the amount in controversy, the Eight Circuit has held that the "requirement is satisfied when a fact finder could legally conclude, from the pleadings that the proof adduced to the court before trial, that the damages are greater than \$75,000." *Capital Indemnity Corp. v. 1405 Assoc., Inc.*, 340 F.3d 547, 549 (8th Cir. 2003).

5. The amount in controversy in this action exceeds Seventy Five Thousand Dollars (\$75,000), exclusive of interests and costs as indicated by the nature of the damages sought in Plaintiff's Petition. 28 U.S.C. §1332(a). Plaintiff has made a demand in this case for \$3,000,000 and therefore the amount in controversy exceeds \$75,000.

6. Defendant's Notice of Removal has been timely filed pursuant to 28 U.S.C. §1446, as Co-Defendant was served on September 17, 2020.

7. Because complete diversity of citizenship exists between Plaintiff and Defendant, and because the amount in controversy in this action exceeds the sum of Seventy Five Thousand Dollars (\$75,000), removal to this court is proper pursuant to 28 U.S.C. §§ 1332 and 1446.

8. Venue is proper in this Court because this action was originally filed in Perry County, Missouri, which is included in this Court's judicial area. 28 U.S.C. §1441.

9. Defendant demands a trial by jury on all issues so triable.

WHEREFORE Defendant, AUTOSPORT ACQUISITIONS, LLC, respectfully requests that the above-referenced state court action be removed from the Circuit Court of Perry County to this Court, and that this Honorable Court accept jurisdiction of the case; and for any further relief this Court deems just and proper.

BROWN & JAMES, P.C.

/s/ Jackie M. Kinder

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served via electronic mail and via United States Mail, postage fully prepaid, this 6th day of October, 2020, to:

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